

82-1520

No. _____

IN SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

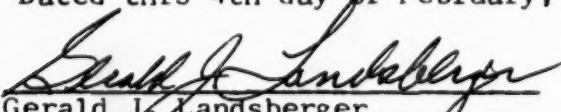
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GERALD J. LANDSBERGER,)	
)	PETITION FOR
PETITIONER)	
)	WRIT OF
vs.)	
)	CERTIORARI
COMMISSIONER OF REVENUE,)	
)	
STATE OF MINNESOTA)	
)	
RESPONDENT)	

TO: THE SUPREME COURT OF THE UNITED STATES

The appellant above-named hereby petitions the Supreme Court of the United States of America for a Writ of Certiorari to review a decision of the Minnesota State Supreme Court filed on November 10, 1982, upon the grounds that said decision is not in conformity with the tax laws of the State of Minnesota and is unwarranted by the evidence.

Dated this 4th day of February, 1983.


Gerald J. Landsberger
Attorney Pro Se for Petitioner
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QUESTIONS PRESENTED FOR REVIEW

1. Whether Advisors Fees for Investing in Assets/Property are a deductible personal expense for the preservation, conservation and maintenance of the personal estate of Mr. Landsberger.
2. Whether the Personal Services Contract between Mr. Landsberger and Professional & Technical Services is a valid contract that meets the standard requirements of a contract, i.e., offer, acceptance, and consideration.
3. Whether the Personal Services Contract resulted in the sale/exchange of Mr. Landsberger's personal services property to a third party and thus transferred legal and tax liability to that third party, namely, Professional & Technical Services.
4. Whether Mr. Landsberger after making the transfer and completing his obligations under the PSC had any further legal/tax liability for the future earnings generated after May 27, 1979.

LIST OF PARTIES TO THE PROCEEDING

For the Petitioner,

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For the Respondent, (State of Minnesota)

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GROUND FOR INVOKING THE SUPREME COURT-ALSO
STATUTORY AND CONSTITUTIONAL PROVISIONS

The Minnesota Tax Court on June 11, 1982 ruled unfavorably on the Petitioners Appeal from the Commissioner's order dated May 22, 1981, relating to the State Income Tax of Appellants for the year 1979. The matter was subsequently appealed to the Minnesota Supreme Court who affirmed the decision of the Minnesota Tax Court en banc without oral argument, dated November 10, 1982, filed same date. The petitioner is now appealing to the Supreme Court of the United States under Statutory Provision U.S.C. Title 28, Section 1257. The Petitioner is opposing the States ruling because it is based on false information and on CONSTITUTIONAL grounds that the State is ignoring Article 1, Sec. 10, para. 1 which reads: "No State shall enter into any Treaty...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...".

STATEMENT OF THE CASE

The two actions of Mr. Landsberger which the State of Minnesota Revenue Department (SMRD) has disallowed and which are rebutted by Mr. Landsberger are as follows:

1. A deduction of \$490.00 in Advisors fees for investing in property/assets regarding the preservation, conservation and maintenance of the personal estate of Mr. Landsberger.
2. A reduction of \$15,000.00 (approx.) from the amount shown on the W-2 issued by Burlington Northern Inc., the sub-contractor employer-user of the personal services rendered by Mr. Landsberger via Professional & Technical Services, (a labor contractor much like Manpower Inc.) during 1979.

SMRD appears to claim that the \$490.00 expenditure is not a deductible expense under Minnesota State Laws, Sec. 290. But the law does not exclude advisors fees.

SMRD also appears to claim that the

\$15,000.00 reduction is not allowable due to their claim that the Personal Services Contract (PSC) between Mr. Landsberger and P&TS is an outlawed procedure described as an "anticipatory assignment of income". SMRD offered no proof to show that any income was given away.

Mr. Landsberger claims that the \$490.00 expenditure is a well recognized type of expense for the purpose of preserving, conserving and maintaining the value of his personal estate for the benefit of his heirs.

Mr. Landsberger also claims that since he signed a valid contract in May, 1979, to divest all legal rights and control over his personal services property via a Personal Services Contract with Professional & Technical Services, a third party totally unrelated to Mr. Landsberger, that Mr. Landsberger no longer thereafter is the legal owner of said asset and he cannot be held liable for any future earnings generated by that asset.

A hearing was held on May 26, 1981 in the offices of the SMRD for the purpose of discussing the issues and the supporting laws, facts, documents and arguments on these two issues. SMRD was represented by Mr. Caulfield, Director, Department of Revenue, Mr. Paul Kempainen, Special Assistant, Attorney General and two other tax officials of the SMRD. Mr. Landsberger represented himself, and Mr. Frank Forrester, Trustee for P&TS appeared as a witness to clarify matters relating to the operation of the Personal Services contract. The entire hearing was audio taped and a tape is available for review of the total discussion (subsequently transcribed in writing).

As confirmed by the audio tape, the controlling contract is the Personal Services Contract between Mr. Landsberger and Professional & Technical Services and not any contract between P&TS and Burlington Northern. The tape near the end also states the position of the SMRD that the sole remaining issue is

the validity of the Personal Services Contract. In effect, the SMRD claimed the Personal Services Contract was invalid and Mr. Landsberger and Professional & Technical Services claimed it is valid. (See Note 1)

Mr. Landsberger filed a petition in the Minnesota Tax Court in order to rebut the disallowance of the SMRD. A hearing was held de novo in the Tax Court on February 16, 1982. The Tax Court allowed both sides to file briefs and allowed Mr. Forrester in his capacity as Trustee of Professional & Technical Services to file an amicus curiae brief.

Note 1

Validity of any contract, including this one, is evicenced by the fact that there was an arm's length offer by Professional & Technical Services, and an acceptance by Mr. Landsberger, and multiple considerations of \$1.00 outright plus some 27 other additional benefits, plus the fact that there was a meeting of the minds, no complaint by either party to the contract, and no evidence that the contract was in violation of public policy or interest. The contract has been in full force and effect for over 3 1/2 years. Valid contracts cannot be abrogated by any governmental agency including SMRD. Courts are required to uphold contracts.

LAW AND ARGUMENT

The criteria for deductions allowed by state laws generally follow the same criteria established for federal tax deductions. IRS Code Sec. 212 sets forth the allowable personal expense deductions as being for the preservation, conservation and maintenance of property for the purpose of possible producing income or profit. The three requirements to be met are (1) the expense must be paid in the tax year (2) the expense must be ordinary and necessary (3) the expense must be for the purpose of producing potential income or profit.

Mr. Landsberger has met all three of these requirements. Mr. Landsberger has a cancelled check during the 1979 tax year showing payment of advisors fees for investing in assets/property. The expense of \$490.00 was a very nominal and inexpensive fee and was required to be paid in advance for the services subsequently required by International Dynamics Inc. The expense re-

sulted in major savings which is a form of income known as "opportunity not lost". The effect of this minor expense was to shore up, preserve and maintain the value and to increase the potential of further savings and gains to my personal estate, which then included cars, real estate, insurance policies, bank accounts, business practice and investments. Tax consequences are also a critical consulting service rendered.

Additional authorities include the following: 162 IRS Code, CCH, Tax Reporter, Vol. 2, para. 2000, 2004, 2005 (g) and (h), 2006; Master Tax Guide, National Business Affairs, Research Inst. of America, Prestice-Hall, Taxation for Accountants.

Mr. Landsberger and Professional & Technical Services (P&TS) mutually signed a Personal Services Contract (PSC) in May, 1979 which was offered and accepted by the two parties. The two parties had a meeting of the minds which has lasted without interruption ever since.

Both parties are totally pleased with the purpose and intent of the PSC. Neither the IRS or the State of Minnesota Revenue Department (SMRD) are parties to this contract. The contract is protected under the Contract Clause of the U.S. Constitution, namely, Article 1, Sec. 10, para. 1 and under Amendment 14, Clause 1. This contract cannot be abrogated by any governmental agency such as the SMRD or the IRS.

Extensive and multiple considerations exist on both sides; all obligations required by the contract have been met for the last four (4) years and no complaint has been raised by either party.

Mr. Landsberger has taken advantage of several monetary and non-monetary considerations included initially and added to in superseding updates to the PSC. The opportunity to reap additional benefits remains fully open to him.

P&TS is a service organization, what is known in the trade as a "body shop". As such

P&TS seeks to provide as many benefits to its independent contractor employees as possible. As the prime contractor, P&TS oversees the needs and desires of its employees on and off the job. P&TS has thousands of employees and operates in almost all states of the Union. No complaint has ever been filed in P&TS employer capacity.

The purpose and intent of the PSC is to allow employees to graduate to becoming "1st Class Citizen" independent contractors to achieve the same working benefits of other unrestricted independent contractors such as lawyers, doctors, dentists, consultants, business men, shop owners, etc. In order to achieve this enviable status and escape the confines of laboring as employees for other people, individuals like Mr. Landsberger are able to move up to independent contractor status via the PSC. Independent contractors earn more money, save more money, avoid personal slights like time clocks, and have the kind of status that others look up to.

The intangible benefit of selfrespect alone is worth the change, and the change is accomplished by accepting the considerations of the PSC. I accepted and benefited.

It is important to see and understand that the PSC does not state in writing, verbally or impliedly that signing the PSC involves at any time for even a fraction of a second any anticipatory "assignment of income." In the first place, it is legally impossible to give away what is not yours to give away. Since Mr. Landsberger had previously sold/exchanged his personal services property, i.e., the earning asset, he no longer had a legal right and dominion to give away any future earnings of that asset. The word "assignment" in tax parlance means only to "give", it does not mean to sell or exchange. Selling and exchanging are tax-free, but giving involves incurring a tax liability on the act of giving after having paid the income tax on the receipt of payment of income. The PSC has absolutely

nothing to do with the totally unfounded and and frivolous claim of the SMRD that it involves an anticipatory assignment of income. No proof or evidence to the contrary has been presented or exists. The position of the SMRD falls totally on this issue alone.

The thrust of the discussion had in trial centered around the question of what constituted "constructive receipt" and what constituted an "assignment of income."

First, we will discuss "constructive receipt." The doctrine of constructive receipt treats as taxable income which unqualifiedly is subject to the demand of a taxpayer using the cash receipts and disbursements method of accounting, whether or not such income actually has been received in cash. According to the Commissioner of IRS, there is no constructive receipt unless the income is credited without restriction, and made available to the taxpayer, to the extent that it may be drawn upon and

brought immediately within his control and disposition. There must be no substantial limitations or conditions on this right. See CCH, Standard Federal Tax Reports s2834, Constructive Receipt of Income. See also Internal Revenue Regulation 1.451-2, Minn. Sta. s290.07, Minn. Income Tax Reg. 2007(6)-2 and Internal Revenue Code s451 (26 USC s451).

In the present case, unrebutted testimony offered by Mr. Landsberger through his witness Mr. Frank Forrester, clearly showed that the funds in question belonged to P&TS. The testimony showed that Mr. Landsberger was not entitled to receive those funds in any way. Indeed, Mr. Forrester testified that if the funds were not forwarded as required, Mr. Landsberger can and would be sued by P&TS for breaching the contract. Mr. Forrester referred to it as "Grand Larceny."

This idea of constructive receipt is not new to tax law. The courts have long held that where monies are not unconditionally

paid to or received by the taxpayer, there is no liability for income taxes on said money. See R.V. Board v Commissioner, 14 BTA 374, Dec. 4612 and R.V. Board v. Commissioner, 18 BTA 650, Dec. 5727 (Acq..) Accord: Huber v. Commissioner, 12BTA 1, Dec. 3972 (Acq.) and William B. Bratt Estate, 7 BTA 621, Dec. 2604 (Acq.).

See also Arwine v. Commissioner, 76 TC 532 (1981), where the Tax Court pointed out that under the constructive receipt doctrine, the issue is whether proceeds not actually possessed by a taxpayer are nonetheless available to him in such a manner that this control over them is not subject to any substantial limitations or restrictions. Mertens Law of Federal Income Taxation, (1981), §10.07. In his testimony, Mr. Forrester plainly established that Mr. Landsberger has no control over the money in question after he has signed the Personal Services Contract. For this reason, the income is not Mr. Landsberger's but rightfully belongs to P&TS.

Since Mr. Landsberger did not "constructively receive" the income, Mr. Landsberger is not liable for any tax thereon. Any tax liability would rest with P&TS.

The second issue of major proportion in this case is whether the personal services contract constitutes an "anticipatory assignment of income" and thus, is of no effect for income tax purposes. It is universally accepted that one cannot avoid one's tax liability by attributing his income to another through an anticipatory assignment, however skillfully or cleverly devised. In the present case of Mr. Landsberger v. Commissioner, we are not involved with an assignment. The personal services contract constitutes an arm's length transfer of property for good and sufficient consideration. This is not an assignment as contemplated by *Lucas v. Earl*, 281 U.S. 111 (1930). Black's Law Dictionary defines "assignment" as follows:

"A transfer or making over to another

of whole of any property, real or personal, in possession or in action, or any estate or right therein." Citing *Bostrom v. Bostrom*, 60 N.D. 792, 236 N.W. 732, 734.

In the present case, we are dealing with the sale of personal services property in an arm's length transaction by Mr. Landsberger to Professional & Technical Services through the Personal Services Contract. Under the terms of the contract, Professional & Technical Services purchases from Mr. Landsberger all right, title and interest in and to Mr. Landsberger's personal services. In exchange, P&TS provides various considerations including estate planning services and a very large line of credit. The twenty-seven specific considerations which are provided are listed in paragraph two, Economic Justifications, in the Entrusted Personal Services Contract itself which is in evidence at the Minnesota Tax Court. Furthermore, Mr. Forrester explained in great detail all of the benefits one was entitled to after signing a personal services contract.

As was stated by Justice Field in the early case of Buchers Union Company v Crescent City Company, 111 U.S. 764 (1883), quoting from Adam Smith in the Wealth of Nations:

"The property which every man has is his own labor, as it is the original foundation of all other property, so it is most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property."

The Supreme Court has long recognized the proposition that personal services are in fact personal property and one has the same constitutional rights to that property as any other property. This includes the right to sell those personal services if one should choose to do so. This is exactly what happened in the present case. Mr. Landsberger has become a party to the personal services contract and has sold his personal services property to P&TS in exchange for the considerations described in the contract. The fact that tax benefits

may be derived from this contractual arrangement can be of no moment.

In Edwards v. Commissioner, 415 F.2d 578, 582 (10th Cir. 1969), the court held:

"The dignity of a contract cannot be set aside because a tax benefit results either by design or accident."

In the case of United States v. Butler, 297 U.S. 615 (1936), the Court stated as follows:

"The judicial branch has only one duty: To lay the Articles of the Constitution beside the statute which is challenged, and to decide whether the latter squares with the former. The only power the court has is the power of judgement."

In a conference with Mr. Landsberger and Mr. Forrester, the SMRD admitted that the personal services contract and its provisions was the controlling instrument when attempting to determine tax liability. The transcript of said conference is on record at SMRD. Since the contract is legally binding in that it contains an offer, an acceptance and consideration paid, the government has

no legal right to set it aside. Any attempt to do so is flatly unconstitutional and should not have been contended by the Tax Court.

SMRD attempts to draw parallels between the within system and the Family Trust program which has been ruled by the United States Tax Court to be without effect for tax purposes. The Court has ruled that the so-called family trust is a grantor trust under Internal Revenue laws. Courts have ruled that the transfer of income involved with said trust is ineffective for income tax purposes. Even viewing the herein arrangement in a light most favorable to the government, it cannot be said that the personal services contract arrangement even remotely resembles a family trust. There is no connection or similarity between the two whatsoever. In a family trust arrangement, a principal assigns his personal income (does not sell it) to a trust which he himself created and is often times the Trustee

and beneficiary. In the present case, the income is not "given" to Professional & Technical Services for P&TS is in the first instance the legal owner by contract. Mr. Landsberger did not create P&TS. Mr. Landsberger is not the trustee of, or beneficiary of, P&TS. Mr. Landsberger has no connection with P&TS, or any of the other entities involved. Once the contract is signed, Mr. Landsberger has no right, title or interest in or to his wages. Mr. Landsberger is not the legal owner of funds belonging to P&TS, therefore if he receives any funds belonging to P&TS, he must act as their Agent and turn over the funds to his Principal, P&TS.

It is axiomatic that to be relieved of tax liability, an individual must transfer not only the right to receive income, but also the property which produces that income. See Commerce Clearing House, Master Tax Guide paragraph 709.

The principle of law can best be described in this fashion: A citizen owns an apartment building from which income in the form of rent is received. Citizen A, through a contract with Citizen B, designates said Citizen B as the owner of all the rent receipts generated by the apartment building. For income tax purposes, this contract is of no effect to transfer the tax liability from Citizen A to Citizen B. This is due to the fact that Citizen A is still the legal owner of the apartment building. As such, under the law, he is the legal owner of the "fruit" which is generated by said apartment building. Conversely, if the same Citizen A, in an arm's length fair market value transaction, sell^s the apartment building and all right, title, and interest in and to said apartment building to Citizen B, Citizen A has thereby divested himself of the tree from which the fruit emanates and has extinguished any tax liability on the income earned by the apartment building.

The liability now lies solely and exclusively with Citizen B.

The present situation, the same arrangement as the latter example is affected in this case with Mr. Landsberger selling the tree (his personal services property) to Professional and Technical Services. The fruit which emanates from said tree (wages) are properly attributable to the one who owns the tree from which the fruit emanated. P&TS therefore, is liable for the tax on said wages.

In sum, because Mr. Landsberger has sold his personal services property to P&TS, P&TS becomes the legal owner of the property and concomitantly, P&TS becomes the owner of the fruit which emanates from said property. Similarly, P&TS is the party responsible for the income tax on said property, not Mr. Landsberger.

In the Supreme Court case of Adkins v. Children's Hospital, 261 U.S. 525 Justice

Sutherland reflected:

"In principle, there can be no difference between the case of selling labor and the case of selling goods."

CONCLUSION

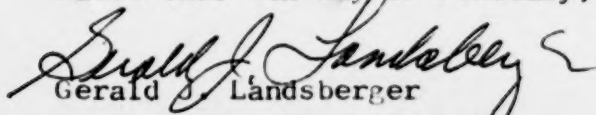
It is inescapable that the SMRD has no factual, legal or logical basis for any disallowance of either the \$490.00 advisors fee for investing in Assets/Property or for the \$15,000.00 (approx.) belonging to Professional & Technical Services. Consequently, there is no basis for not accepting Mr. Landsberger's properly, accurately filed Minnesota State Tax returns.

- . Mr. Landsberger has properly supported all of his deductions with contracts, confirmations, cancelled checks, and Personal Service Contract copies.
- . Professional & Technical Services is the sole legal owner of the personal services property and thus is the sole legal/taxable owner of the earnings from that property.

- . The Personal Services Contract is valid in both form and substance and was carried out over many years to the letter. Neither side filed any complaint of breach of contract.
- . There is no evidence of any anticipatory assignment of income. The Personal Services Contract is the reverse of the case presented to the U. S. Supreme Court in Lucas v. Earl, 1930, 281 U.S. 113-115. The precedent stated then applies today in favor of Mr. Landsberger and Professional & Technical Services, i.e., whoever owns the "tree" owns the "fruit". The legal owner is the one who is taxed.

The undersigned petitions the Supreme Court of the United States to set aside the ruling of the Minnesota State Tax Court and Minnesota Supreme Court as being in error.

Dated this 4th day of February, 1983.


Gerald J. Landsberger
Attorney Pro Se for Appellant